

DIVORCE PROCESS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: V. Lowry Snow

LONG TITLE**Committee Note:**

The Judiciary Interim Committee recommended this bill.

General Description:

This bill addresses divorces.

Highlighted Provisions:

This bill:

- ▶ addresses mandatory courses before certain actions by the court;
- ▶ repeals various provisions related to divorce actions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:****30-3-4**, as last amended by Laws of Utah 2015, Chapter 45**30-3-11.3**, as last amended by Laws of Utah 2016, Chapter 91**30-3-11.4**, as last amended by Laws of Utah 2014, Chapter 347**REPEALS:****30-3-12**, as last amended by Laws of Utah 1969, Chapter 72

28 **30-3-13.1**, as last amended by Laws of Utah 1993, Chapter 227
29 **30-3-14.1**, as enacted by Laws of Utah 1969, Chapter 72
30 **30-3-15.1**, as enacted by Laws of Utah 1969, Chapter 72
31 **30-3-15.3**, as last amended by Laws of Utah 2015, Chapter 45
32 **30-3-15.4**, as last amended by Laws of Utah 1996, Chapter 79
33 **30-3-16.1**, as enacted by Laws of Utah 1969, Chapter 72
34 **30-3-16.2**, as enacted by Laws of Utah 1969, Chapter 72
35 **30-3-16.3**, as enacted by Laws of Utah 1969, Chapter 72
36 **30-3-16.4**, as enacted by Laws of Utah 1969, Chapter 72
37 **30-3-16.5**, as enacted by Laws of Utah 1969, Chapter 72
38 **30-3-16.6**, as enacted by Laws of Utah 1969, Chapter 72
39 **30-3-16.7**, as last amended by Laws of Utah 2011, Chapter 297
40 **30-3-17**, as last amended by Laws of Utah 2011, Chapter 297
41 **30-3-17.1**, as last amended by Laws of Utah 2011, Chapter 297
42 **30-3-18**, as last amended by Laws of Utah 2012, Chapter 404

44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **30-3-4** is amended to read:

46 **30-3-4. Pleadings -- Decree -- Use of affidavit -- Private records.**

47 (1) (a) The complaint shall be in writing and signed by the petitioner or petitioner's
48 attorney.

49 (b) A decree of divorce may not be granted upon default or otherwise except upon legal
50 evidence taken in the cause. If the decree is to be entered upon the default of the respondent,
51 evidence to support the decree may be submitted upon the affidavit of the petitioner with the
52 approval of the court.

53 (c) If the petitioner and the respondent have a child or children, a decree of divorce
54 may not be granted until both parties have attended the mandatory course described in Section
55 **30-3-11.3** or **30-3-11.4**, and have presented a certificate of course completion to the court. The
56 court may waive this requirement, on its own motion or on the motion of one of the parties, if it
57 determines course attendance and completion are not necessary, appropriate, feasible, or in the
58 best interest of the parties.

(d) All hearings and trials for divorce shall be held before the court or the court commissioner as provided by Section 78A-5-107 and rules of the Judicial Council. The court or the commissioner in all divorce cases shall enter the decree upon the evidence or, in the case of a decree after default of the respondent, upon the petitioner's affidavit.

(2) (a) A party to an action brought under this title or to an action under Title 78B, Chapter 12, Utah Child Support Act, Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act, Title 78B, Chapter 14, Utah Uniform Interstate Family Support Act, Title 78B, Chapter 15, Utah Uniform Parentage Act, or to an action to modify or enforce a judgment in the action may file a motion to have the file other than the final judgment, order, or decree classified as private.

(b) If the court finds that there are substantial interests favoring restricting access that clearly outweigh the interests favoring access, the court may classify the file, or any part thereof other than the final order, judgment, or decree, as private. An order classifying part of the file as private does not apply to subsequent filings.

(c) The record is private until the judge determines it is possible to release the record without prejudice to the interests that justified the closure. Any interested person may petition the court to permit access to a record classified as private under this section. The petition shall be served on the parties to the closure order.

Section 2. Section 30-3-11.3 is amended to read:

30-3-11.3. Mandatory educational course for divorcing parents -- Purpose -- Curriculum -- Exceptions.

(1) The Judicial Council shall approve and implement a mandatory course for divorcing parents in all judicial districts. The mandatory course is designed to educate and sensitize divorcing parties to their children's needs both during and after the divorce process.

(2) The Judicial Council shall adopt rules to implement and administer this program.

(3) (a) As a prerequisite to receiving a divorce decree, both parties are required to attend a mandatory course on their children's needs after filing a complaint for divorce and receiving a docket number, unless waived under Section 30-3-4. If that requirement is waived, the court may permit the divorce action to proceed.

(b) With the exception of a temporary restraining order pursuant to Rule 65, Utah Rules of Civil Procedure, a party may file, but the court may not hear, a motion for an order

90 related to the divorce until the moving party completes the mandatory educational course for
91 divorcing parents required by this section.

92 (4) The court may require unmarried parents to attend this educational course when
93 those parents are involved in a visitation or custody proceeding before the court.

94 (5) The mandatory course shall instruct both parties:

95 (a) about divorce and its impacts on:

96 (i) their child or children;

97 (ii) their family relationship; and

98 (iii) their financial responsibilities for their child or children; and

99 (b) that domestic violence has a harmful effect on children and family relationships.

100 (6) The course may be provided through live instruction, video instruction, or an online
101 provider. The online and video options must be formatted as interactive presentations that
102 ensure active participation and learning by the parent.

103 (7) The Administrative Office of the Courts shall administer the course pursuant to
104 Title 63G, Chapter 6a, Utah Procurement Code, through private or public contracts and
105 organize the program in each of Utah's judicial districts. The contracts shall provide for the
106 recoupment of administrative expenses through the costs charged to individual parties,
107 pursuant to Subsection (9).

108 (8) A certificate of completion constitutes evidence to the court of course completion
109 by the parties.

110 (9) (a) Each party shall pay the costs of the course to the independent contractor
111 providing the course at the time and place of the course. A fee of \$8 shall be collected, as part
112 of the course fee paid by each participant, and deposited in the Children's Legal Defense
113 Account, described in Section 51-9-408.

114 (b) Each party who is unable to pay the costs of the course may attend the course
115 without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of
116 impecuniosity filed in the district court. In those situations, the independent contractor shall be
117 reimbursed for its costs from the appropriation to the Administrative Office of the Courts for
118 "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce
119 may be entered, the court shall make a final review and determination of impecuniosity and
120 may order the payment of the costs if so determined.

(10) Appropriations from the General Fund to the Administrative Office of the Courts for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay the costs of an indigent parent who makes a showing as provided in Subsection (9)(b).

(11) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided if requested by the Judiciary Interim Committee.

Section 3. Section **30-3-11.4** is amended to read:

30-3-11.4. Mandatory orientation course for divorcing parties -- Purpose -- Curriculum -- Exceptions.

(1) There is established a mandatory divorce orientation course for all parties with minor children who file a petition for temporary separation or for a divorce. A couple with no minor children ~~[are]~~ is not required, but may choose to attend the course. The purpose of the course ~~[shall be]~~ is to educate parties about the divorce process and reasonable alternatives.

(2) A petitioner shall attend a divorce orientation course no more than 60 days after filing a petition for divorce.

(3) (a) With the exception of a temporary restraining ~~[orders]~~ order pursuant to Rule 65, Utah Rules of Civil ~~[Procedures]~~ Procedure, a party may file, but the court may not hear, ~~[temporary orders until the party seeking temporary orders has completed]~~ a motion for an order related to the divorce or petition for temporary separation, until the moving party completes the divorce orientation course.

(b) Notwithstanding Subsection (3)(a), both parties shall attend a divorce orientation course before a divorce decree may be entered, unless waived by the court under Section 30-3-4.

(4) The respondent shall attend the divorce orientation course no more than 30 days after being served with a petition for divorce.

(5) The clerk of the court shall provide notice to a petitioner of the requirement for the course, and information regarding the course shall be included with the petition or motion, when served on the respondent.

(6) The divorce orientation course shall be neutral, unbiased, at least one hour in duration, and include:

(a) options available as alternatives to divorce;

(b) resources available from courts and administrative agencies for resolving custody and support issues without filing for divorce;

(c) resources available to improve or strengthen the marriage;

(d) a discussion of the positive and negative consequences of divorce;

(e) a discussion of the process of divorce;

(f) options available for proceeding with a divorce, including:

(i) mediation;

(ii) collaborative law; and

(iii) litigation; and

(g) a discussion of post-divorce resources.

(7) The course may be provided in conjunction with the mandatory course for divorcing parents required by Section 30-3-11.3.

(8) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter 6a, Utah Procurement Code, through private or public contracts.

(9) The course may be through live instruction, video instruction, or through an online provider.

(10) ~~(a)~~ (a) Each A participant shall pay the costs of the course, which may not exceed \$30, to the independent contractor providing the course at the time and place of the course.

(b) A petitioner who attends a live instruction course within 30 days of filing may not be charged more than \$15 for the course.

(c) A respondent who attends a live instruction course within 30 days of being served with a petition for divorce may not be charged more than \$15 for the course.

~~[(a)]~~ (d) A fee of \$5 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account described in Section 51-9-408.

~~[(b)]~~ (e) A participant who is unable to pay the costs of the course may attend without payment and request an Affidavit of Impecuniosity from the provider to be filed with the petition or motion. The provider shall be reimbursed for its costs by the Administrative Office of the Courts. A petitioner who is later determined not to meet the qualifications for impecuniosity may be ordered to pay the costs of the course.

(11) Appropriations from the General Fund to the Administrative Office of the Courts

for the divorce orientation course shall be used to pay the costs of an indigent petitioner who is determined to be impecunious as provided in Subsection (10)(b)(e).

(12) The Online Court Assistance Program shall include instructions with the forms for divorce ~~[which]~~ that inform the petitioner of the requirement of this section.

(13) ~~[Both parties shall attend a divorce orientation course before a divorce decree may be entered, unless waived by the court.]~~ A certificate of completion constitutes evidence to the court of course completion by the parties.

(14) It shall be an affirmative defense in all divorce actions that the divorce orientation requirement was not complied with, and the action may not continue until a party has complied.

(15) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided if requested by the Judiciary Interim Committee.

Section 4. **Repealer.**

This bill repeals:

Section **30-3-12, Courts to exercise family counseling powers.**

Section **30-3-13.1, Establishment of family court division of district court.**

Section **30-3-14.1, Designation of judges -- Terms.**

Section **30-3-15.1, Appointment of domestic relations counselors, family court commissioner, and assistants and clerks.**

Section **30-3-15.3, Commissioners -- Powers.**

Section **30-3-15.4, Salaries and expenses.**

Section **30-3-16.1, Jurisdiction of family court division -- Powers.**

Section **30-3-16.2, Petition for conciliation.**

Section **30-3-16.3, Contents of petition.**

Section **30-3-16.4, Procedure upon filing of petition.**

Section **30-3-16.5, Fees.**

Section **30-3-16.6, Information not available to public.**

Section **30-3-16.7, Effect of petition -- Pendency of action.**

Section **30-3-17, Power and jurisdiction of judge.**

Section **30-3-17.1, Proceedings considered confidential -- Written evaluation by**

214 **counselor.**

215 Section **30-3-18**, Waiting period for hearing after filing for divorce -- Exemption --

216 **Use of counseling and education services not to be construed as condonation or**

217 **promotion.**

Legislative Review Note

Office of Legislative Research and General Counsel